

THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 12754 of 1999

Between:

T.Dharma Rao, s/o. late Bushaiavarma,
R/o. H.No.2-112, Venkatramnagar colony,
Suraram 'x' roads, via.Zeedimetla, Hyderabad

...Petitioner

and

The General Manager, H.M.T. Ltd.,
M.T.H. Division, H.M.T.township post,
Hyderabad.

...Respondent

ORDER:

1. Challenging the action of the respondent in not paying gratuity amount and other retirement benefits of the petitioner with interest and for a consequential direction to the respondent to pay the same, the present Writ Petition is filed.

2. The brief facts that are necessary for disposal of this Writ Petition may be stated as follows:

The petitioner retired from service on 31.03.1998 in the respondent company after attaining age

of superannuation. The respondent has to settle payment of gratuity amount to the petitioner on or before 30.04.1998. But, he did not do so and so, he has to pay the gratuity amount along with interest. Non-payment of gratuity amount is an offence. The petitioner requested the Deputy General Manager (Finance) and the Assistant General Manager (Finance) personally for several times. On 05.12.1998, the petitioner issued a notice to the respondent for payment of the gratuity amount along with interest @ 18% p.a. and also for release of other retirement benefits. Because of the inaction on the part of the respondent, the petitioner is facing lot of problems. Hence, the Writ Petition.

3. The respondent filed his counter affidavit stating that M/s. HMT Limited is a necessary party to the proceedings and so, the Writ Petition is not maintainable for mis-joinder and non-joinder of necessary parties; that HMT Limited is not exercising any sovereign or governmental functions and it is not a state as contemplated under Article 12 of the Constitution of India and hence, no writ can lie against it; that the petitioner was paid an amount of Rs.1,63,403/- towards full and final settlement of gratuity; that the remedy of petitioner is otherwise as he can only make the claim in accordance

with the provisions of the Payment of Gratuity Act and the Rules made thereunder; that the respondent is not responsible for payment of any amounts due under the Death-cum-Service Monetary Benefit Fund; that the respondent company is under severe financial crisis; hence, it is prayed to dismiss the Writ Petition.

4. Heard both sides. The issue is with regard to payment of interest on delayed payment of gratuity. Insofar as the payment of the amount under Death-cum-Service Monetary Benefit Fund, it is specifically stated in the counter that the amount has to be paid by a separate independent body which is registered under the Societies Registration Act and the respondent company is nothing to do with the payment of the same. The society is not made a party. Hence, no finding can be given on the aspect of Death-cum-Service Monetary Benefit Fund.

5. Insofar as payment of gratuity is concerned, the learned counsel for the petitioner relied upon a judgment in Writ Appeal No.1166 of 1997 dated 21.11.1997 by a Division Bench of this Court wherein payment of interest @ 12% p.a. is ordered. On the other hand, the learned counsel for the respondent relied on a decision in *V.Balakrishna & others v. General Manager*,

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wherein it is held that every dispute relating to the determination of the amount of gratuity, including interest, if any, payable for the delayed payment, is required to be adjudicated only under the provisions of the Act and the Rules framed thereunder. It is further held that this Court can not entertain a writ petition unless it is clearly shown as to why the remedy could not be availed under the provisions of the Act. In this Writ Petition, no grounds are urged for not availing alternative remedy before the other statutory authority. Further, the judgment of the Division Bench relied upon by the learned counsel for the petitioner is not directly on the point of maintainability and hence, it has no application. Therefore, the Writ Petition is not maintainable.

6. The Writ Petition is, accordingly, dismissed leaving open the remedies available to the petitioner under Law. No costs.

12.07.2005

DRK

^[1] 1999(1) ALD 432